

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

NATHANIEL CHASTAIN,

Defendant.

22-CR-305 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:

As discussed on the record at the close of proceedings today, the parties shall file their proposals with respect to the Jury’s third note by **8:30 p.m.** To facilitate the process, the Court proposes the following potential response for the parties’ consideration:

Your question concerns the first element of Count One.

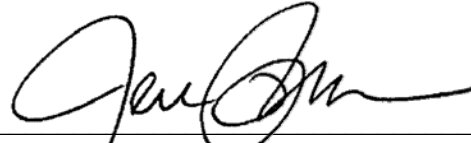
As I previously instructed you, the first element of Count One requires the Government to prove beyond a reasonable doubt that there was a scheme or artifice to defraud OpenSea of its property — specifically, its “confidential business information.” Information is “confidential business information” if it was acquired or created by a business for a business purpose, and the business both considered and treated that information in a way that maintained the company’s exclusive right to that information. That is, the company must both consider the information to be confidential and take affirmative steps to treat the information as confidential and maintain exclusivity; if the company “considers” information to be confidential but does not take affirmative steps to treat it as such and maintain exclusivity, it does not qualify as property.

As these instructions suggest, the focus of the inquiry with respect to whether the information at issue was “confidential business information” is on the *company*, namely OpenSea, not on any particular officer or employee. Of course, a company can act only through its officers and employees. Mr. Finzer is one of those officers and employees and, thus, in deciding whether the Government has proved beyond a reasonable doubt that OpenSea considered and treated the information at issue to be confidential, you may consider the conduct and testimony of Mr. Finzer as well as any other evidence that relates to the issue. What weight, if any, you give any such evidence is, of course, for you to decide.

In addition to any proposal that a party makes in its submission, the party should include any suggestions or objections to the language above (identifying the relevant line number(s)) and include a redline identifying any proposed changes to the language.

SO ORDERED.

Dated: May 2, 2023
New York, New York

A handwritten signature in black ink, appearing to read 'Jesse M. Furman', written over a horizontal line.

JESSE M. FURMAN
United States District Judge